

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 312 (Sub-No. 3X)

SOUTH CAROLINA CENTRAL RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN CHESTERFIELD AND DARLINGTON COUNTIES, S.C.

Decided: May 31, 2013

South Carolina Central Railroad Company, LLC (SCRF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 12.8-mile line of railroad beginning at milepost 319.89 +/- (centerline of Burlington Drive road crossing), near Society Hill, and extending north to milepost 332.68 (south line of Market Street), including other legs of wye track extending west to milepost 332.48 (east line of U.S. Route 1), in Cheraw, in Chesterfield and Darlington Counties, S.C. (the Line). Notice of the exemption was served and published in the Federal Register on January 6, 2012 (77 Fed. Reg. 835). The exemption became effective on February 5, 2012. The January 6 notice stated that, if consummation had not been effected by SCRF's filing of a notice of consummation by January 6, 2013, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

On January 12, 2012, the Town of Cheraw, S.C. (Town) timely requested a notice of interim trail use or abandonment (NITU) pursuant to the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and a public use condition under 49 U.S.C. § 10905. By decision and NITU served on February 3, 2012, this proceeding was reopened and a 180-day period was authorized for the Town to negotiate with SCRF for interim trail use, and a public use condition was imposed. The NITU was vacated at the Town's request by decision served June 21, 2012, and the public use condition expired by its terms on August 3, 2012, leaving no legal or regulatory barriers to consummating the abandonment.

In a decision served on April 3, 2013, the Board accepted a late-filed request from SCRF to extend the filing deadline for its notice of consummation until December 31, 2013. According to SCRF, after interim trail use negotiations between SCRF and the Town ended, SCRF began interim trail use/rail banking discussions with Friends of Cheraw Trail (Friends), albeit without Friends having sought a NITU for that purpose, and SCRF sought the consummation deadline extension to provide Friends an opportunity to file a request for a NITU for the Line. In the April 3 decision, the Board granted a 60-day extension of the consummation deadline (until June 2, 2013), finding that extension sufficient to permit Friends, or any other interested trail user, to file a request for a NITU for the Line.

On May 24, 2013, Friends of Cheraw to Society Railtrail (Cheraw Friends), a South Carolina nonprofit corporation,<sup>1</sup> filed a request for the issuance of a NITU to negotiate with SCRF for acquisition of the Line for use as a trail under the Trails Act and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, Cheraw Friends has submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a letter filed on May 29, 2013, SCRF indicates its willingness to negotiate with Cheraw Friends for interim trail use and supports Cheraw Friends' request.

Because Cheraw Friends' request complies with the requirements of 49 C.F.R. § 1152.29 and SCRF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, SCRF may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on January 6, 2012, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the Cheraw Friends to negotiate with SCRF for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until November 27, 2013.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

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<sup>1</sup> It appears that Cheraw Friends is the same organization as Friends, but in any event, the Board's extension of the consummation deadline permitted any interested potential trail sponsor to seek a NITU for the Line.

4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 3 above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by November 27, 2013, for the right-of-way, interim trail use may be implemented. If no agreement is reached, SCRF may fully abandon the Line.

8. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.